



JUL 18 2023

July 17, 2022

CLERK OF THE COURT

The Honorable Dan Patrick

**Via Electronic Mail**

Re: Mr. Paxton's July 16, 2023 Discovery Dispute Letter/Motion

Dear Lieutenant Governor Patrick:

In a midnight missive, Mr. Paxton's counsel requested that this Court impose five additional discovery obligations upon the Texas House of Representatives Board of Managers ("House Managers"). With the exception of the request for a privilege log, Mr. Paxton never raised any of these issues with the House Managers' counsel. Regardless, the Senate should deny the requests because they are contrary to the existing discovery order and existing law and are unworkable.

**First**, Mr. Paxton asks that the Senate order the House to "immediately" produce "all written and recorded witness statements" in the possession of House Managers, the Committee, and their agents, "**regardless of any claim of work product or any other privilege.**" (emphasis added). The request is unprecedented. To begin with, the Senate's July 12 Discovery Order is clear. It requires production "as soon as practicable." As the House Managers have stated, they will comply with this Order and provide any responsive documents they presently possess by July 21, 2023.

Contrary to the law, counsel demands that the House Managers be forced to produce work product or attorney-client privileged material. This request is outrageous, and antithetical to the most basic privileges afforded by the law. Indeed, the Texas Code of Criminal Procedure evidences how Mr. Paxton's request is out of bounds. Article 39.14(a) states unequivocally that discovery does NOT include:

the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things **not otherwise privileged** that constitute or contain evidence material to any matter involved in the action ....

TEX. CODE OF CRIM. P. art. 39.14(a) (emphasis added).

Despite making such an unprecedented request, Mr. Paxton does not provide any legal or factual basis for it. He does not claim waiver of the privilege or that there is some type of exigent circumstances meriting such an uncalled-for suggestion. Nor can he. And undoubtedly, Mr. Paxton's request would involve an unparalleled exercise of governmental power wherein the Senate would compel the House to waive fundamental

and well-recognized legal privileges. Thus, we ask that the Senate decline Mr. Paxton's invitation to take such drastic and unsupportable action.

**Second**, Mr. Paxton's request requiring the House to "immediately" provide notice of the receipt of "supplemental evidence", and then produce this material within 48 hours, is similarly unheard of, impractical, and unnecessary. As a threshold issue, Mr. Paxton's use of the broad and undefined term "supplemental evidence" does not provide either party with guidance as to what this phrase means. Regardless, the request is unworkable. The efforts necessary to electronically produce materials to Mr. Paxton require a multistep process. This will in most instances take more than 48 hours. Our productions must preserve necessary electronic information (i.e., metadata). We must also apply bates numbers to files so that the production can be properly documented and format the documents so they can be provided as part of a load file. Similarly, requiring the House to notify the Court about receipt of such material, and their production, could result in an endless litany of e-mails to the Senate. Instead, the House Managers will follow the Discovery Order and supplement the production with responsive documents as soon as practicable. The House Managers will continue to produce the documents to Mr. Paxton as requested.

**Third**, Mr. Paxton's request for a privilege log that "comports with Texas law" is absurd. What he requests is actually contrary to the law. As lawyers who have represented the State or the accused in more than 100 criminal trials (both state and federal), we have never produced, requested, or even heard of a court ordering a prosecutor to produce a privilege log. Simply put, privilege logs are a discovery concept adopted for civil proceedings, not criminal ones. But even under civil law, there is no basis for requiring a privilege log. Texas Rules of Civil Procedure do not require the logging of attorney-client or core work product communications made during the course of litigation. See TEX. R. CIV. P. 193.3(c); TEX. R. CIV. P. 192.5(b).

Thus, whether one practices in the civil or criminal realm, attorney-client communications and work product created during litigation is neither discoverable nor required to be included in a privilege log. See TEX. R. CIV. P. 192.5(b) and 193.3(c); TEX. CODE CRIM. PROC. art. 39.14(a). These are the only types of privileges that exist here.

**Fourth**, Mr. Paxton requests that the House Managers' lawyers provide "custodian information for all documents produced to the Attorney General indicating the original source of the document." Once again, what Mr. Paxton wants is simply wrong. We are unable to investigate and discover the original source of documents provided to the House Managers. We can only tell Mr. Paxton what entity provided them, such as the Office of the Attorney General.

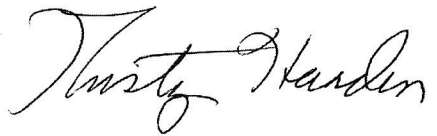
**Fifth**, Mr. Paxton's last request is that "The House shall construe any ambiguity in the Discovery Order in favor of disclosure." That makes no sense and is totally contrary to the Discovery Order. The Discovery Order is not ambiguous, and this is not a contract

dispute. Simply because Mr. Paxton does not understand a rule does not mean it should be construed against the House Managers.

This request also contradicts the Order itself, which unequivocally states that “[a]ny dispute between the Managers and counsel to Warren Kenneth Paxton, Jr., relating to compliance with this order should be brought to the Court’s attention as soon as possible through written communications or motions.” Consistent with this dictate, the House Managers will seek guidance from the Senate regarding the implementation of the July 12 Discovery Order whenever it is called for.

Mr. Paxton’s letter/motion is without merit as it seeks to impose additional confusing, and unheard of, discovery obligations upon the House Managers. We ask that the Senate deny Mr. Paxton’s requests out of hand.

Sincerely,



Rusty Hardin  
**Rusty Hardin & Associates, LLP**  
1401 McKinney Street, Suite 2250  
Houston, Texas 77010



Dick DeGuerin  
**DeGuerin and Dickson**  
1018 Preston  
Houston, Texas 77002

cc: Tony Buzbee  
Dan Cogdell  
Allison C. Collins  
Amy S. Hilton  
Kateland R. Jackson  
Joseph N. Mazarra  
Lara Hollingsworth  
Jenny Brevorka